

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7788

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICHAEL ALLEN KOKOSKI,

Defendant - Appellant.

Appeal from the United States District Court for the Southern
District of West Virginia, at Beckley. David A. Faber, Chief
District Judge. (CR-92-90)

No. 04-7837

In Re: MICHAEL ALLEN KOKOSKI,

Petitioner.

On Petition for Writ of Mandamus. (CR-92-90)

Submitted: February 24, 2005

Decided: March 23, 2005

Before NIEMEYER, WILLIAMS, and KING, Circuit Judges.

No. 04-7788 dismissed; No. 04-7837 petition denied by unpublished
per curiam opinion.

Michael Allen Kokoski, Appellant/Petitioner Pro Se. Michael Lee Keller, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

In these two consolidated cases, Michael Allen Kokoski petitions this court for a writ of mandamus, and seeks an order declaring the district court's criminal judgment void ab initio because of fraud on the court.

In case No. 04-7837, Kokoski seeks an order directing the district court to rule on his outstanding motions and provide him with a transcript of a pretrial hearing at the Government's expense. Mandamus relief is available only when the petitioner has a clear right to the relief sought. See In re First Fed. Sav. & Loan Assn., 860 F.2d 135, 138 (4th Cir. 1988). Further, mandamus is a drastic remedy and should be used only in extraordinary circumstances. See Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); In re Beard, 811 F.2d 818, 826 (4th Cir. 1987). Mandamus may not be used as a substitute for appeal. See In re United Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979). The relief sought by Kokoski is not available by way of mandamus. Accordingly, although we grant leave to proceed in forma pauperis, we deny the petition for writ of mandamus.

In appeal No. 04-7788, Kokoski asserts that the Government committed fraud on the court by excluding the true object of their search from search warrant applications, and thus seeks an order declaring the district court's criminal judgment void ab initio. However, such a claim must be filed in the

district court, and is thus not properly before this court. Fed. R. Civ. P. 60(b)(3). Accordingly, we dismiss this appeal. We also deny all other outstanding motions. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 04-7788 DISMISSED

No. 04-7837 PETITION DENIED